IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.794 OF 2002
WITH
CIVIL APPLICATION NO.1125 OF 2002
IN
SECOND APPEAL NO.794 OF 2002

Popat Genu Khanekar .. Appellant.
Vs.
Baban Laxman Mandekar & Ors. .. Respondents.

Mr.Prathmesh Bhargude for Shri A.V.Anturkar for the appellant/applicant.
Mr.Pankaj Das for respondent no.1B.

CORAM : D.B.BHOSALE, JJ.
DATED : 25TH JULY, 2007.

P.C.:

. Heard learned counsel for the appellant and respondent no.1B.

2. Defendant No.3 has filed this appeal challenging concurrent findings of fact recorded by the courts below. Both the courts below have come to the conclusion that the defendants have encroached upon the land bearing Gat No.71 of the plaintiff to the extent of 11 Ares. The findings are based on the report of the surveyor dated 29.11.1989. Mr.Bhargude, learned counsel for the appellant submitted that before filing of the suit the plaintiff had got the land measured and in the said report dated 17.6.1980 an encroachment to the extent of 22 Ares was revealed and on the basis thereof initially the plaintiff had claimed possession of 22 Ares. The second survey was conducted after filing of the suit in pursuance of the order passed by the

court. It shows encroachment only to the extent of 11 Ares. There being a discrepancy in the two survey reports, Mr.Bhargude submitted that the trial court ought to have got a Superior test (Nimtana) done to find out as to whether there is an encroachment and if yes, to what extent. He prayed for remand to the trial Court with direction to appoint DILR for superior test. In support of this submission he placed reliance upon the judgment of this court in **Prabhakar Bhagwantrao Mahajan V. Satyanarayan Shriwallabh Laddha & Others 2004(6) Bom.C.R.813**. In my opinion, this judgment, relied upon by Mr.Bhargude, has no application to the facts of the present case. Admittedly, the appellant did not apply for superior test nor did he filed objections to the report of the surveyor dated 29.11.1989. Merely because there exists some negligible discrepancies in the evidence of the surveyor his evidence cannot be discarded and in any case it cannot be said that the map drawn by him is inadmissible in evidence. Both the courts below have carefully considered the evidence on record and have rightly recorded that the plaintiff-respondent has proved encroachment to the extent of 11 Ares. The findings recorded are entirely based on the evidence on the record. No substantial question of law is raised in the present appeal. Hence the appeal is dismissed. Consequently, the civil application is also disposed of.

(D.B.BHOSALE, J.)